

RD AN No. 4702 (1980-D)
January 7, 2013

TO: State Directors
Rural Development

ATTENTION: Housing Program Directors,
Guaranteed Loan Coordinators,
Area Directors and Area Specialists

FROM: Tammye Treviño *(Signed by Tammye Treviño)*
Administrator
Housing and Community Facilities Programs

SUBJECT: Single Family Housing Guarantee Loan Program
RD Instruction 1980-D, Section 1980.324
Lender Charges and Fees

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify and expand upon Agency requirements under RD Instruction 1980-D, Section 1980.324(a), for routine charges and fees that a lender may charge borrowers. The Agency wishes to prevent lenders from charging excessive fees for guaranteed loans and protect low and moderate income borrowers from paying excessive loan fees or borrowing funds for fees that are not reasonable and customary.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4585 (1980-D), dated July 11, 2011, which expired on July 31, 2012.

EXPIRATION DATE:
December 31, 2013

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

IMPLEMENTATION RESPONSIBILITIES:

7 CFR Part 1980, Subpart D (also known as RD Instruction 1980-D) at Section 1980.324(a), states that lenders “may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.” Rural Housing Service considers loans guaranteed under the Single Family Housing Guaranteed Loan Program (SFHGLP) to be similar to loans insured or guaranteed by the Federal Housing Administration (FHA) or by the Department of Veterans Affairs (VA). Fees charged by a lender to borrowers for loans guaranteed under the SFHGLP should not exceed fees charged by the same lender for loans insured or guaranteed by the FHA or VA.

Discount points representing a reduction to the note interest rate from the rate authorized in 7 CFR 1980.320 may be included in the loan guaranteed by the SFHGLP for low-income applicants only in accordance with 7 CFR 1980.310(d). Discount points representing other fees and charges (i.e., loan size adjustments, credit score adjustments, origination or processing charges as part of the production of the loan application, or any other charge not relating to an interest rate reduction) may be charged by the lender, but may not be included in the loan guaranteed by the SFHGLP for purchase transactions. Discount points for refinance transactions may be included in the loan guaranteed by the SFHGLP subject to the requirements and restrictions applied to refinance transactions.

Once a loan has closed, lenders are required to submit closing packages to the Agency that evidence all closing conditions have been met. The Agency’s review of this documentation includes an analysis of the HUD-1 form to ensure the lender has charged fees that are reasonable and customary. If, when reviewing a closing package the Agency determines that a lender has charged fees or used loan funds to pay for fees that appear questionable or too high, the Agency should ask the lender to justify the fees before issuing a guarantee. A lender must be able to document that the charges or fees assessed against borrowers whose loans are guaranteed under the SFHGLP do not exceed charges or fees routinely made by the lender for similar transactions such as FHA or VA loans before a loan guarantee is issued. Lender justification should only be required when the Agency is reasonably certain that the fees being charged are not reasonable and customary and, therefore, ineligible for SFHGLP loan purposes.

Under the new RESPA rules that lenders have had to comply with since January 1, 2010, lenders are no longer required to itemize loan origination fees on the Settlement Statement (HUD-1). The sum of loan origination fees is now disclosed as “Our origination charge” on line 801 of the HUD-1. In accordance with HUD Mortgagee Letter 2009-53, if a government program or state law requires that lenders provide more detailed information to specify distinct origination fees and charges, lenders may itemize these charges in the empty 800 lines of the HUD-1. The Agency has a responsibility to ensure that lenders are not charging excessive fees; therefore, lenders should utilize line 808 of the HUD-1 (left of the column) and additional sequentially numbered lines, as needed, to itemize the origination fees and charges.

In addition to not issuing guarantees on loans where the fees do not meet the above guidelines, Agency staff should counsel lenders who are determined to be out of compliance on the provisions of the regulation and be monitored closely for future compliance. Failure to resolve the noncompliance may result in the termination of a lender's eligibility under Section 1980.309(h), of RD Instruction 1980-D.

Should there be any comments or questions concerning this AN, please contact the Single Family Housing Guaranteed Loan Division at 202-720-1452.